



United States Department of the Interior

FISH AND WILDLIFE SERVICE



Post Office Box 1306
Albuquerque, New Mexico 87103

In Reply Refer To:
FWS/R2/NWRS/FOIA
FWS-2019-00363 (Partial 1)

Mr. Liam Knox
MuckRock News
DEPT MR 68099
411A Highland Ave
Somerville, Massachusetts 02144-2516

Dear Mr. Knox:

This partially responds to your Freedom of Information Act (FOIA) request dated January 30, 2019, in which you seek the following:

- “- A copy of all files, memos, and communications concerning the humanitarian aid group No More Deaths.
- A copy of all communications between the agency and local law enforcement that mention No More Deaths.
- A copy of all communications from Cabeza Prieta Wildlife Refuge Manager Sidney Slone that include the words "No More Deaths" or the acronym "NMD."
- Any police citations that mention No More Deaths or the names of some of its members: Scott Warren, Natalie Renee Hoffman, Oona Meagan Holcomb, Madeline Abbe Huse, and Zaachila I. Orozco-McCormick.
- Any communications regarding changes made to the access-permit application for the Cabeza Prieta National Wildlife Refuge and the Barry M. Goldwater bombing grounds in 2017, including language that prohibits leaving food and water on these federal lands."

Your FOIA request has been forwarded to the Southwest Region National Wildlife Refuge System for processing. In this partial response to your request, we are sending you records related to previous "No More Deaths" FOIA requests. From these, portions of 54 records are

conversations. We are withholding it because disclosure to the public would chill communications between federal employees and harm the government's ability to exchange information. When the government enters the marketplace as an ordinary commercial buyer or seller, the government's information is protected under the commercial information privilege if it is sensitive information not otherwise available, and disclosure would significantly harm the government's monetary functions or commercial interests. The theory behind the privilege is that the government may be placed at a competitive disadvantage or the consummation of a contract may be endangered if confidential information generated by the government is disclosed.

Portions of 28 records have been redacted pursuant to Exemption (b)(6) of the FOIA. Under Exemption 6, agencies may withhold information or records on individuals contained in "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" (5 U.S.C. § 552(b)(6)). The withheld material includes personal contact information (e.g. personal cell and home phone numbers, home addresses, and driver's and vehicle licensing information).

The phrase "similar files" covers any agency records containing information about a particular individual that can be identified as applying to that individual. To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information. Under the FOIA, the only relevant public interest to consider under the exemption is the extent to which the information sought would shed light on an agency's performance of its statutory duties or otherwise let citizens 'know what their government is up to.' (*See DOD v. FLRA*, 510 U.S. 487, 497 (1994) (quoting *Reporters Comm.*, 489 U.S. at 773)). The burden is on the requester to establish that disclosure would serve the public interest. When the privacy interest at stake and the public interest in disclosure have been determined, the two competing interests must be weighed against one another to determine which is the greater result of disclosure: the harm to personal privacy or the benefit to the public. The purposes for which the request for information is made do not impact this balancing test, as a release of information requested under the FOIA constitutes a release to the general public.

The information that has been withheld under Exemption 6 consists of personal information, as described above, and we have determined that the individuals to whom this information pertains have a substantial privacy interest in withholding it. Additionally, we have determined that the disclosure of this information would shed little or no light on the performance of the agency's statutory duties. Because the harm to personal privacy is greater than whatever public interest may be served by disclosure, release of the information would constitute a clearly unwarranted invasion of the privacy of these individuals and we are withholding it under Exemption 6.

We are withholding 20 documents in full and 2 documents in part pursuant to FOIA Exemption (7)(A). Exemption (7)(A) protects law enforcement records if their release could reasonably be expected to interfere with enforcement proceedings. For the materials withheld under 7(A), we have determined they are law enforcement records related to a pending or prospective investigation and releasing them could reasonably be expected to interfere with enforcement

Also, please note the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation and does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov, Web: <https://ogis.archives.gov>
Telephone: 202-741-5770 / Fax: 202-741-5769 / Toll-free: 1-877-684-6448

You also may seek dispute resolution services from our FOIA Public Liaison, Cathy Willis at 720-732-6687 or via email at cathy_willis@fws.gov.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

We will continue to search and review records for your request. The fees incurred in this partial response are less than \$50.00, and are not being charged in accordance with 43 C.F.R. § 2.37(g). If you have any questions or concerns regarding this request, please contact Government Information Specialist, David Tischer, at 505-248-6658 or by email at fw2foia@fws.gov.

Sincerely,

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Digitally signed
by MELANIE RUIZ
Date: 2019.04.03
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Region 2 FOIA Coordinator

Enclosure (CD)